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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,967	11/14/2001	Eleanor L. Schuler	0607-1007	6784
7590 01/25/2005 William M. Lee, Jr. Barnes & Thornburg Suite 410 209 S. LaSalle Street Chicago, IL 60604			EXAMINER DONNELLY, JEROME W	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 01/25/2005

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/992,967  
Filing Date: November 14, 2001  
Appellant(s): SCHULER ET AL.

Barnes and Thornbury  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/14/2001.

This is in response to the brief on appeal filed 11/14/2001.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

This appeal involves claims 12 - 17.

Claims 1-11 have been canceled.

**(4) *Status of Amendments After Final***

The appellants statement of the status of the amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

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The rejection of claims 1-11 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-17 rejected under 35 U.S.C. 102(b) as being anticipated by Libin.

Libin teaches a hand-held vibrating massager 10 and method for applying pressure and vibration to a user body along pressure point (col. 2, lines 10-17 and col. 4, lines 2-7. In Fig. 5 Libin discloses pressure points located in the claimed target zone.

**(11) *Response to Argument***

In response to appellants arguments the examiner reminds the appellants that to place the vibrating massager of Libin on the pressure points disclosed by Libin would


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meet the claims of applicants device. It is further noted that applicant has failed to claim any specific step which would limit his method to the treatment of cardiac atrial arrhythmias.

The examiner also reminds the applicant the prior art of Libin and the applicants method are in the same field of endeavor and that although silent as to the treatment of cardiac disorders, an inherent result must be realized when a massaging device is placed on the same target points as claimed and disclosed by appellant. Applicant is also reminded that specific frequencies and therefore the disclosure of Libon meets the claim language of the appellant.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



**MICHAEL A. BROWN**  
**PRIMARY EXAMINER**


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September 20, 2004


Conferees

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